FILE COPY

FILED
OCT 30 1959
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 506

J. A. BOOKER ET AL.,
Petitioner,

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, INC., ET AL.,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

AARON KRAVITCH,
PHYLLIS KRAVITCH,
Attorneys for Petitioner

P. O. Box 593,
Savannah, Georgia.

E. I. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo. HArrison 1-8080

INDEX

I. Petition for Writ of Certiorari 1

II. Certificate of Counsel 12

III. Notice to Counsel for Respondents 13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No.

J. A. BOOKER ET AL.,
Petitioner,

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, INC., ET AL.,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

The petition of J. A. Booker *et al.*, for writ of certiorari respectfully shows:

1. That petitioners are seeking a writ of certiorari directed to the Supreme Court of Georgia to review the final action of said court in affirming the judgment of the Superior Court of Chatham County, Georgia, by a decision rendered on the 11th day of September, 1959.

2. Petitioners, namely, J. A. Booker, Bernard B. Eichholz, O. E. Bright, Harry T. Shore, Jr., Mrs. Louise

B. Shore, C. J. Branch, Thomas J. Dooley, Jr., Carl Preslar, Stanley Harris, John Noglik and Margaret Noglik, filed the original proceedings in the Superior Court of Chatham County, Georgia, against the defendants in Certiorari, First Federal Savings and Loan Association and A. Pratt Adams, Jr., Dale Critz, Kenneth C. Lasseter, Hugh Hill and George E. Oliver, directors, in which they alleged that they were depositors and members of said institution which was incorporated by charter granted under the terms of Federal Home Loan Bank Act, as amended, issued in 1935 under the provision of the Federal Home Loan Bank Act, as amended, Public Law 304, 72nd Congress, approved July 22, 1932, 47 Stat. 725, 12 U.S.C. 1429, *et seq.*, being known as "Act to Create Federal Home Loan Banks, to Provide for the Supervision Thereof and for Other Purposes". Said charter being granted to said association as provided for in Section 5 of said Home Owners Loan Act of 1933, as amended, and has operated as such a savings and loan institution under the laws of the United States and by virtue of said Federal Charter since said time, having been granted a charter, under the rules and regulations governing Federal Savings and Loan Systems, known as Charter "K" revised.

3. That under the Act creating the Federal Home Loan Bank System, this system is composed of eleven regional Federal Home Loan Banks, located in New York, Boston, Pittsburgh, Greensboro, North Carolina, Cincinnati, Indianapolis, Chicago, Des Moines, Little Rock, Arkansas, Topeka and San Francisco. The local Institution in Savannah, Chatham County, Georgia, is under the supervision and jurisdiction of the Federal Home Loan Bank of Greensboro, North Carolina, located in Greensboro, N. C.

4. Upon being granted a charter with the right to do business as such in 1935, said institution commenced business, as aforesaid, in said city, state and county, and has been governed by officers and a Board of Directors and is still so governed.

5. That under the charter and rules and regulations of the Federal Home Loan Bank, the annual meeting of the members of the Association for the election of directors and for the transaction of any other business of the Association shall be held in its Home Office at 2 o'clock P.M. in the afternoon, on the third Wednesday in January of each year, if not a legal holiday, or if a legal holiday, on the next succeeding day not a legal holiday, and following the meeting of the Board of Directors, said Board shall elect a president, one or more vice-presidents, a secretary and a treasurer.

6. Said institution does not have outstanding stock but is governed by its members' membership being based on the amount of deposits that such person or persons shall have in said institution, with such number of votes as shall be deposited in said institution at the time fixed by its rules and regulations, and also, all borrowers from said institution shall likewise be members and have a right to participate in the election of the Board of Directors annually. Each holder of a savings account being permitted to cast his vote for each $100 or fraction thereof of the withdrawal value of his account, and the borrowing member shall be permitted to cast one vote and such number of votes to which he may be entitled as a holder of a savings account, but no member, however, shall cast more than fifty votes. The number of votes which each member shall be entitled to cast at any meeting of its members shall be determined upon the books of the Association as of the end of the calendar month next preceding the date

of such meeting, and the Association shall be under the direction of a Board of Directors of not less than five nor more than fifteen, as fixed in the Association's by-laws. That during the year 1958, the officers of the institution were as follows:

O. E. Bright, Chairman of the Board
J. D. McLamb, President
L. H. Smith, Vice-President
A. J. Bright, Jr., Secretary
B. A. Gill, Treasurer
Roy E. McCabe, Asst. Secretary

The directors of the institution were as follows:

O. E. Bright, Chairman of the Board
J. D. McLamb
A. J. Bright, Jr.
J. A. Booker
Charles E. Bell
L. H. Smith
Dale Critz
Lewis M. Little

That shortly before the Annual meeting of said Board of Directors which was held in the offices of said institution at 30 East Bryan Street, Savannah, Chatham County, Georgia, on the 21st day of January, 1959, commencing at 2 P.M., O. E. Bright, Chairman of the Board and one of the directors had previously resigned and A. Pratt Adams, Jr., had been elected as a director to replace him and a short time later Ken Lasseter was elected an additional director.

7. Under the provisions of the Board, the directors were elected for staggered terms. The terms of Dale Critz, Joe Booker and A. J. Bright, Jr., expired at the end of the year 1958. Dale Critz was renominated for re-election at the annual meeting held, as aforesaid, and Joe Booker and

A. J. Bright, Jr. were not. A. Pratt Adams, Jr., and Ken Lasseter were also renominated by management to be elected at said annual stockholder's meeting and Hugh Hill was nominated as a new director and Judge George E. Oliver was also nominated as a new director to succeed Ken Lasseter when his term expired at the end of 1960.

8. That following said annual meeting, the alleged Board of Directors elected the following officers:

J. D. McLamb, President
L. H. Smith, Vice-President
B. A. Gill, Vice-President and Controller
W. Norton Street, Vice-President and Loan Officer, and
Lewis M. Little, Secretary

9. Petitioners show that the said defendant corporation had 13,234 members composed of depositors and borrowers as of December 31, 1958, and that in their annual report as of December 31, 1958, their total assets were $22,207,087.32 with reserves of $1,158,214.87.

10. Petitioners show that under the charter and rules and regulations as aforesaid pertaining to said institution, members are permitted to vote at all meetings either in person or by proxy, but there are no rules and provisions as to the type of proxies that could be used or the form, and that, therefore, the same is governed by the laws of Georgia pertaining to corporations.

11. That whenever any person desires to become a member of the First Federal Savings and Loan Association and to open an account therein, he or she are required to sign what purports to be a signature card but what actually contains in fine print in addition thereto a proxy to the official proxy committee of the institution, and that as far as petitioners know or have been advised, none of

the members required to sign said so-called signature cards were apprised or acquainted with the fact that they were giving a proxy authorization to the management of said institution to an alleged proxy committee for an indefinite period of time.

12. Petitioners show that said alleged proxies are invalid for the further reason that:

(a) They are not addressed to two or more persons to act as agents for said proxies as required by Code Section 22-1863 of the Code of Georgia.

(b) The proxies are not limited as to time and are uncertain and indefinite.

(c) Failed to set out the powers conferred by such written instrument as required by law, or the meeting or meetings and the times at which said meetings are to be held.

(d) That there being no persons named in said proxies, an authorization to a proxy committee in which no persons have been designated is in legal significance an authorization in blank and is contrary to law and public policy.

(e) Because said proxies are vague, uncertain and indefinite in that no limitations are placed upon the so-called proxy committee and such vague, indefinite authorization and conferring of power is contrary to the statutes and to the public policy of the State.

(f) Because of the facts set forth in paragraph 13, there was no meeting of the minds, or intention on part of the parties to enter into a contract, to-wit: proxy authorization.

(g) Because the proxies being based on the amount of deposits and or borrowing are for an indefinite number of votes which may vary depending on the time same are used, and therefore are uncertain, indefinite, ambiguous and invalid.

13. Petitioners show that at the time of the scheduled annual meeting which was called at the Home Office starting at 1 P.M. on the third Wednesday, January 21, 1959, as provided for in the rules and regulations of the Federal Home Loan Bank, which governs the operations of said local institution, printed ballots were given to the various members who were present with the names of the directors to be elected, who had been nominated by the nominating committee named by management. There was no provision provided for any other person or persons to be voted on. That although the directors, under the rules and by-laws had a right to call the meeting at some other place or to adjourn it to some other place, the president failed to do so and held the meeting in a small room approximately 8 x 15 with a large table in the middle thereof and chairs for about 8 persons. At that time there were approximately 75 to 100 members present and the room was capable of holding only 12 to 15 persons with the result that members were crowded into other rooms and into the corridor out of hearing of the meeting, with the result that the meeting was not conversant to more than 15 or 20 persons. The meeting continued on for several hours in order that the proxies might be tabulated downstairs in the banking quarters of the institution and as a result thereof, many of the members left and when the results were announced, it was announced by the auditor, Walter C. Askew, and the alleged proxies were never brought into the meeting, only the alleged results from the tabulations of the proxies

downstairs and the only votes which actually were voted on at the meeting were those by members who were crowded around the small table to sign their names. The number of votes having already been written on said ballots and the voting was not secret as every member had to identify himself with the result that by the use of the proxies in the form indicated, which was legally objectionable, the president announced that the nominees of management had been elected by a very large majority when in truth and in fact, if the meeting were held properly and if the proxies which were illegally voted were legal proxies, a majority of the legal votes cast were against the election of the nominees of the nominating committee, to-wit: Dale Critz, A. Pratt Adams, Ken Lasseter, Hugh Hill and George E. Oliver.

14. Petitioners show that under the rules and regulations of said organizations, not only must the names of nominees be posted ten days before the election, which petitioners admit was done, but the proxies must be turned over to the Secretary for the use of the proxy committee, which was not done and the proxies, if valid, must be voted by the official proxy committee, which was also not done, and therefore because of the fact that the proxies were invalid and because said proxies were not deposited with the Secretary, as provided by law, and were not voted by the proxy committee as provided by law, all of the proxies voted by management in favor of the slate and which constituted a majority in favor of the slate of nominees, should not have been counted and if said proxies had not been counted, a majority of the votes cast would have been against the election of said nominees.

15. That under the law and the rules and regulations of said organization, where there are no nominees named

or elected, nominations could then have been submitted by the members and this would have resulted in the election of persons other than those nominated by management and declared to have been elected at said meeting, and the action of the president of said institution and the directors present in acquiescing in the action of the President and permitting the election to be held, as aforesaid, resulted in the illegal election of the directors chosen at said annual membership meeting.

16. That the rules and regulations of said institution denying to members the right to vote for persons of their choice at annual members' meetings are contrary to law and to public policy, and a taking of property without just compensation, and taking of property without due process of law in violation of Amendment XIV, U. S. Constitution Art. I, Sec. 805 of the Annotated Code of Georgia and Art. 1; Section 2-101, 2-102, 2-103 and Section 2-125.

17. That although said defendant corporation operates under a Federal charter, under its financial structure, jurisdiction under the Act of June 25, 1948, 28 U.S.C.A. 1349, does not lie in the United States District Court but in the State Courts of Georgia, and governed by the laws of Georgia.

18. This case involves the validity of the rules and regulations of the respondents, as set out in said petition, in which the allegation is made that said rules and regulations are illegal and contrary to public policy and contrary to Amendment XIV of the Constitution of the United States in that the right to vote for directors is forbidden and denied and said institutions created by Acts of Congress are self-perpetuating and said rules and regulations are contrary to the Acts of Congress and contrary to law.

19. The allegations in said petition aver that the proxies given to management are used to perpetuate said officers in office and that under their rules and regulations no person other than those nominated can be voted on by the stockholders at the stockholders meeting. That said rules and regulations and provisions, under which said association is governed, are unconstitutional and contrary to Article XIV of the Constitution of the United States.

20. Petitioners aver that a petition for declaratory judgment and a restraining order and temporary and permanent injunction was filed in Chatham Superior Court on the 19th day of February, 1959, to which petition a motion to dismiss was filed by the respondents and sustained by said Court on the 24th day of April, 1959. That from said adverse ruling a bill of exceptions was filed to the Supreme Court of Georgia, which court affirmed the judgment of the Superior Court of Chatham County, Georgia, on the 11th day of September, 1959.

21. Petitioners show that the issues as set forth above are as to whether or not (a) the rules and regulations of the defendant corporation are in keeping with the Acts of Congress under which it was established. (b) whether the rules and regulations themselves are valid and legal and are in violation of Article 14 of the Constitution of the United States.

22. Petitioners aver that this Court has jurisdiction. That the Federal Constitutional issues have been properly preserved and presented for consideration. The issues involved are as to the validity of the rules and regulations of said banking institution under the terms of the Fourteenth Amendment, which was determined by the Supreme Court of Georgia, and the opinion is incorporated into the record, and although petitioners do not agree with

the statement of their contentions by the Supreme Court of Georgia, such statement shows that a federal issue was presented and decided.

23. Petitioners show that a decision by the Supreme Court of Georgia is the final decision by the highest court of the State in which a decision could be had and that all remedies in the State Court have been exhausted.

24. Petitioners further show that the issues presented are substantial and that they are of national importance.

25. As far as petitioners are informed, this case presents for the first time the question as to whether or not the State Court in the determination of this issue has ruled correctly. The petitioners point out to the court that a determination of this question will determine the validity of the rules and regulations in thousands of other Federal Savings and Loan Associations of the Country who proceed under similar rules.

26. Petitioners set forth as an appendix to this petition which has been printed, they are filing with the Clerk of the Supreme Court of the United States the record set out in the petition and demurrers, judgment of the Superior Court of Chatham County, Georgia, the opinion and judgment of the Supreme Court of Georgia, all of which parts of the record have been certified to by the Clerk of the Superior Court in which said Court said original records are. A brief in support is being presented.

WHEREFORE PETITIONERS PRAY THAT a writ of certiorari issue under the seal of this court, directed to the Supreme Court of Georgia commanding said court to certify and send to this court a full and complete

transcript of the record and of the proceedings of the said Supreme Court of Georgia had in the case numbered and entitled on its docket, No. 20528. *J. A Booker et al., appellants, v. First Federal Savings & Loan Association et al., appellees*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Supreme Court of Georgia be reversed by the court, and for such further relief as to this court may seem proper.

AARON KRAVITCH,
PHYLLIS KRAVITCH,
Attorneys for Petitioners.

CERTIFICATE OF COUNSEL.

I, AARON KRAVITCH, being of counsel for petitioners, do hereby certify that I have this day caused a copy of the petition, notice of the filing of the petition, copy of certified record and supporting brief to be served on counsel for the respondents within ten days after the filing. Opposing counsel being A. Pratt Adams, of the firm of Adams, Adams, Johnson & Brennan, and E. Ormonde Hunter of the firm of Connerat, Dunn, Hunter, Cubbedge & Houlihan.

This 1 day of Dec, 1959.

Of Counsel for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES

J. A. BOOKER ET AL., *Plaintiffs in Certiorari,*

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, INC., ET AL., *Defendants in Certiorari.*

Notice.

To: A. Pratt Adams of the firm of Adams, Adams, Johnson & Brennan and E. Ormonde Hunter, of the firm of Connerat, Dunn, Hunter, Cubbedge, & Houlihan, Attorneys of record for the defendants in Certiorari.

In compliance with Rule 38 of the Supreme Court of the United States, please take notice that we are filing in the Supreme Court of the United States a petition for Writ of Certiorari, together with a certified transcript of the record and supporting brief as required.

This day of , 1959.

Of Counsel for Plaintiffs in Certiorari.